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## PART - VII GOVERNMENT OF MEGHALAYA ORDERS BY THE GOVERNOR

### NOTIFICATIONS

The 5th July, 2010.

**No.LL(B).76/2010/16** – The following Act passed by the Parliament and assent by the President of India on the date indicate below is hereby republished for general information.

(*E.M. Donn*)

Deputy Secretary to the Govt. of Meghalaya,  
Law (B) Department.

| Sl. No. | Name of Act  | Act No. & Year | Dt. of assent by the President |
|---------|--|----------------|--------------------------------|
| 1.      | The Code of Criminal Procedure (Amendment) Act, 2008 | No. 5 of 2009  | 7.1.2009                       |

### MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 9th January, 2009/Pausa 19, 1930 (Saka)

The following Act of Parliament received the assent of the President on the 7th January, 2009, and is hereby published for general information:—

### THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2008

No. 5 OF 2009

[7th January, 2009.]

An Act further to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2008.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

2 of 1974.

2. In section 2 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), after clause (w), the following clause shall be inserted, namely:—

Amendment of section 2.

“(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir;”.

3. In section 24 of the principal Act, in sub-section (8), the following proviso shall be inserted, namely:—

Amendment of section 24.

“Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.”.

Amendment  
of section 26.

4. In section 26 of the principal Act, in clause (a), the following proviso shall be inserted, namely:—

“Provided that any offence under section 376 and sections 376A to 376D of the Indian Penal Code shall be tried as far as practicable by a Court presided over by a woman.” 45 of 1860.

Amendment  
of section 41.

5. In section 41 of the principal Act,—

(i) in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—

“(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;”;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.”.

Insertion of  
new sections  
41A, 41B, 41C  
and 41D.

6. After section 41 of the principal Act, the following new sections shall be inserted, namely:—

"41A. (1) The police officer may, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

Notice of appearance before police officer.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.

41B. Every police officer while making an arrest shall—

Procedure of arrest and duties of officer making arrest.

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

41C. (1) The State Government shall establish a police control room—

Control room at districts.

(a) in every district; and

(b) at State level.

(2) The State Government shall cause to be displayed on the notice board kept outside the control rooms at every district, the names and addresses of the persons arrested and the name and designation of the police officers who made the arrests.

(3) The control room at the Police Headquarters at the State level shall collect from time to time, details about the persons arrested, nature of the offence with which they are charged and maintain a database for the information of the general public.

41D. When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation."

Right of arrested person to meet an advocate of his choice during interrogation.

7. In section 46 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

Amendment of section 46.

"Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest."

Substitution  
of new  
section for  
section 54.

8. For section 54 of the principal Act, the following section shall be substituted, namely:—

Examination  
of arrested  
person by  
medical  
officer.

“54. (1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.”.

Insertion of  
new section  
55A.

9. After section 55 of the principal Act, the following section shall be inserted, namely:—

Health and  
safety of  
arrested  
person.

“55A. It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.”.

Insertion of  
new section  
60A.

10. After section 60 of the principal Act, the following section shall be inserted, namely:—

Arrest to be  
made strictly  
according to  
the Code.

“60A. No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.”.

Amendment  
of section  
157.

11. In section 157 of the principal Act, in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.”.

Amendment  
of section  
161.

12. In section 161 of the principal Act, in sub-section (3), the following provisos shall be inserted, namely:—

“Provided that statement made under this sub-section may also be recorded by audio-video electronic means.”.

Amendment  
of section  
164.

13. In section 164 of the principal Act, in sub-section (1), for the proviso, the following provisos shall be substituted, namely:—

“Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.”.

Amendment  
of section  
167.

14. In section 167 of the principal Act, in sub-section (2),—

(a) in the proviso,—

(i) for clause (b), the following clause shall be substituted, namely:—

“(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;”;

(ii) for *Explanation II*, the following *Explanation* shall be substituted, namely:—

“*Explanation II*.— If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.”;

(b) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.”.

15. In section 172 of the principal Act, after sub-section (I), the following sub-sections shall be inserted, namely:—

Amendment  
of section  
172.

“(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1B) The diary referred to in sub-section (I) shall be a volume and duly paginated.”.

16. In section 173 of the principal Act,—

Amendment  
of section  
173.

(a) after sub-section (I), the following sub-section shall be inserted, namely:—

“(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.”;

(b) in sub-section (2), after clause (g), the following clause shall be inserted, namely:—

“(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C or 376D of the Indian Penal Code.”.

45 of 1860.

17. After section 195 of the principal Act, the following section shall be inserted, namely:—

Insertion of  
new section  
195A.

“195A. A witness or any other person may file a complaint in relation to an offence under section 195A of the Indian Penal Code.”.

Procedure for  
witnesses in  
case of  
threatening,  
etc.

45 of 1860.

18. In section 198 of the principal Act, in sub-section (6), for the words “fifteen years of age”, the words “eighteen years of age” shall be substituted.

Amendment  
of section  
198.

19. In section 242 of the principal Act, in sub-section (I), the following proviso shall be inserted, namely:—

Amendment  
of section  
242.



"Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police."

Amendment  
of section  
275.

20. In section 275 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence."

Amendment  
of section  
309.

21. In section 309 of the principal Act,—

(a) in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that when the inquiry or trial relates to an offence under sections 376 to 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.";

45 of 1860.

(b) in sub-section (2), after the third proviso and before *Explanation 1*, the following proviso shall be inserted, namely:—

45 of 1860.

"Provided also that—

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

Amendment  
of section  
313.

22. In section 313 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section."

Amendment  
of section  
320.

23. In section 320 of the principal Act,—

(i) in sub-section (1), for the TABLE, the following TABLE shall be substituted, namely:—

| "TABLE"   |   |   |
|---|---|---|
| Offence   | Section of the Indian Penal Code applicable | Person by whom offence may be compounded                        |
| 1   | 2   | 3   |
| Uttering words, etc., with deliberate intent to wound the religious feelings of any person. | 298   | The person whose religious feelings are intended to be wounded. |
| Voluntarily causing hurt.   | 323   | The person to whom the hurt is caused.                          |
| Voluntarily causing hurt on provocation.  | 334   | Ditto.  |

| 1   | 2                   | 3   |
|---|---------------------|---|
| Voluntarily causing grievous hurt on grave and sudden provocation.  | 335                 | The person to whom the hurt is caused.  |
| Wrongfully restraining or confining any person.   | 341,<br>342         | The person restrained or confined.  |
| Wrongfully confining a person for three days or more  | 343                 | The person confined.  |
| Wrongfully confining a person for ten days or more.   | 344                 | Ditto.  |
| Wrongfully confining a person in secret.  | 346                 | Ditto.  |
| Assault or use of criminal force.   | 352,<br>355,<br>358 | The person assaulted or to whom criminal force is used.                               |
| Theft.  | 379                 | The owner of the property stolen.   |
| Dishonest misappropriation of property.   | 403                 | The owner of the property misappropriated.  |
| Criminal breach of trust by a carrier, wharfinger, etc.   | 407                 | The owner of the property in respect of which the breach of trust has been committed. |
| Dishonestly receiving stolen property knowing it to be stolen.  | 411                 | The owner of the property stolen.   |
| Assisting in the concealment or disposal of stolen property, knowing it to be stolen.                     | 414                 | Ditto.  |
| Cheating.   | 417                 | The person cheated.   |
| Cheating by personation.  | 419                 | Ditto.  |
| Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.             | 421                 | The creditors who are affected thereby.   |
| Fraudulently preventing from being made available for his creditors a debt or demand due to the offender. | 422                 | Ditto.  |
| Fraudulent execution of deed of transfer containing false statement of consideration.                     | 423                 | The person affected thereby.  |
| Fraudulent removal or concealment of property.  | 424                 | Ditto.  |
| Mischief, when the only loss or damage caused is loss or damage to a private person.                      | 426,<br>427         | The person to whom the loss or damage is caused.                                      |

| 1  | 2   | 3   |
|--|-----|---|
| Mischief by killing or maiming animal.   | 428 | The owner of the animal.                                  |
| Mischief by killing or maiming cattle, etc.  | 429 | The owner of the cattle or animal.                        |
| Mischief by injury to works of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to private person.         | 430 | The person to whom the loss or damage is caused.          |
| Criminal trespass.   | 447 | The person in possession of the property trespassed upon. |
| House-trespass.  | 448 | Ditto.  |
| House-trespass to commit an offence (other than theft) punishable with imprisonment.   | 451 | The person in possession of the house trespassed upon.    |
| Using a false trade or property mark.  | 482 | The person to whom loss or injury is caused by such use.  |
| Counterfeiting a trade or property mark used by another.   | 483 | Ditto.  |
| Knowingly selling, or exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark.                       | 486 | Ditto.  |
| Criminal breach of contract of service.  | 491 | The person with whom the offender has contracted.         |
| Adultery.  | 497 | The husband of the woman.                                 |
| Enticing or taking away or detaining with criminal intent a married woman.   | 498 | The husband of the woman and the woman                    |
| Defamation, except such cases as are specified against section 500 of the Indian Penal Code (45 of 1860) in column 1 of the Table under sub-section (2). | 500 | The person defamed.                                       |
| Printing or engraving matter, knowing it to be defamatory.   | 501 | Ditto.  |
| Sale of printed or engraved substance containing defamatory  | 502 | Ditto.  |



| 1   | 2   | 3                       |
|---|-----|-------------------------|
| matter, knowing it to contain such matter.                          |     |                         |
| Insult intended to provoke a breach of the peace.                   | 504 | The person insulted.    |
| Criminal intimidation.  | 506 | The person intimidated. |
| Inducing person to believe himself an object of divine displeasure. | 508 | The person induced.”;   |

(ii) in sub-section (2), for the TABLE the following TABLE shall be substituted, namely:—

“TABLE

| Offence   | Section of the Indian Penal Code applicable | Person by whom offence may be compounded  |
|---|---|---|
| 1   | 2   | 3   |
| Causing miscarriage.  | 312   | The woman to whom miscarriage is caused.  |
| Voluntarily causing grievous hurt.  | 325   | The person to whom hurt is caused.  |
| Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.          | 337   | Ditto.  |
| Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others. | 338   | Ditto.  |
| Assault or criminal force in attempting wrongfully to confine a person.   | 357   | The person assaulted or to whom the force was used.                                   |
| Theft, by clerk or servant of property in possession of master.   | 381   | The owner of the property stolen.   |
| Criminal breach of trust  | 406   | The owner of property in respect of which breach of trust has been committed.         |
| Criminal breach of trust by a clerk or servant.   | 408   | The owner of the property in respect of which the breach of trust has been committed. |
| Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.                    | 418   | The person cheated.   |
| Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.     | 420   | The person cheated..  |

| 1  | 2   | 3  |
|--|-----|--|
| Marrying again during the life-time of a husband or wife.  | 494 | The husband or wife of the person so marrying.                                 |
| Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his public functions when instituted upon a complaint made by the Public Prosecutor. | 500 | The person defamed.  |
| Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.  | 509 | The woman whom it was intended to insult or whose privacy was intruded upon.”; |

(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under section 34 or 149 of the Indian Penal Code may be compounded in like manner.”.

45 of 1860

Amendment  
of section  
327.

24. In section 327 of the principle Act,—

(a) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that *in camera* trial shall be conducted as far as practicable by a woman Judge or Magistrate.”;

(b) in sub-section (3), the following proviso shall be inserted, namely:—

“Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.”.

Amendment  
of section  
328.

25. In section 328 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) If the civil surgeon finds the accused to be of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist for care, treatment and prognosis of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or mental retardation:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

(a) head of psychiatry unit in the nearest government hospital; and

(b) a faculty member in psychiatry in the nearest medical college.”;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) If such Magistrate is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but

without questioning the accused, if he finds that no *prima facie* case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate finds that a *prima facie* case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 330.

(4) If such Magistrate is informed that the person referred to in sub-section (1A) is a person with mental retardation, the Magistrate shall further determine whether the mental retardation renders the accused incapable of entering defence, and if the accused is found so incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the manner provided under section 330."

26. In section 329 of the principal Act,—

Amendment  
of section  
329.

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

- (a) head of psychiatry unit in the nearest government hospital; and
- (b) a faculty member in psychiatry in the nearest medical college."

(b) for sub-section (2), the following sub-sections shall be substituted, namely:—

"(2) If such Magistrate or Court is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no *prima facie* case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate or Court finds that a *prima facie* case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(3) If the Magistrate or Court finds that a *prima facie* case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 330."

27. For section 330 of the principal Act, the following section shall be substituted, namely:—

Substitution  
of new section  
for section  
330.

Release of  
person of  
unsound mind  
pending  
investigation  
or trial.

"330. (1) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or mental retardation which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Health Act, 1987.

14 of 1987.

(3) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or mental retardation, further determine if the release of the accused can be ordered:

Provided that—

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 328 or section 329, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons of unsound mind or mental retardation may be ordered wherein the accused may be provided care and appropriate education and training."

Insertion of  
new section  
357A.

Victim  
compensation  
scheme.

28. After section 357 of the principal Act, the following section shall be inserted, namely:—

"357A. (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."

29. In section 372 of the principal Act, the following proviso shall be inserted, namely:—

Amendment  
of section 372.

"Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

30. In section 416 of the principal Act, the words "order the execution of the sentence to be postponed, and may, if it thinks fit" shall be omitted.

Amendment  
of section  
416.

31. After section 437 of the principal Act, the following section shall be inserted, namely:—

Insertion of  
new section  
437A.

"437A. (1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

Bail to  
require  
accused to  
appear before  
next  
appellate  
Court.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply."

32. In the Second Schedule to the principal Act, in Form No. 45, after the figures "437", the figures and letter "437A" shall be inserted.

Amendment  
of Form 45.

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T. K. VISWANATHAN,  
Secy. to the Govt. of India.

**MINISTRY OF HOME AFFAIRS**

New Delhi, the 30th December, 2009.

**S.O.3313(E).**—In exercise of the powers conferred by sub-section (2) of Section I of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), the Central Government hereby appoints the 31st day of December, 2009, as the date on which the provisions of the said Act, except Section 5, Section 6 and clause (b) of Section 21, shall come into force.

[F.No.1/1/2007-Judl.Cell-Vol.VI]

**S. C. SRIVASTAVA,**  
Jt. Secretary.